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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,514	09/26/2006	Menduh Guncy	4398-567	3671
23117 7590 05/26/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
STUART, COLIN W				
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3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,514

Applicant(s)

GUNEY ET AL.

Examiner

COLIN STUART

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 10/13/06 & 7/10/06
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This office action is in response to a preliminary amendment filed 3/8/07. As directed by the amendment, claims 1-31 were cancelled, no claim was amended, and claims 32-52 were added. Thus, claims 32-52 are pending in this application.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first gap" claim 1 line 13, "second gap" claim 1 line 14, and the "at least one strap" claim 47 line 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Information Disclosure Statement

3. The information disclosure statement filed 7/10/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 45-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language "a general spring loop design" in claim 45 line 1-2 is indefinite because the examiner cannot ascertain the structural limitations arising from the claim with respect to the specification.

Claim Rejections - 35 USC § 102

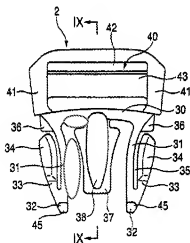
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 32-37 and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Matoba (7,111,368).**

FIG. 6



In regards to claim 32, Matoba shows a locking clip capable of being used for removably coupling to a frame and headgear assembly for a respiratory mask which includes a main body 41 with a front portion 30 and a rear portion 2 in which the front portion is to be removably coupled with a frame of a respiratory mask and the rear portion coupled to a headgear assembly (see Fig. 6). Matoba also shows the rear

portion with a crossbar 40 that forms an opening 42 for a strap to be passed and a front portion which includes at least one resiliently flexible spring arm 45 (see Fig. 6). The spring arms each include a first end 32 which include a locking tab 34 at a free end and a second end 36 attached to the main body. The spring arm also includes a proximal portion 31 extending from the second end and a central portion 33 extending from and angled with respect to the proximal portion (see Fig. 6). The proximal portion of Matoba's locking clip's proximal portion is spaced from the main body by a first gap and the central portion is spaced from the rear portion by a second gap, in which the two gaps form a general L-shape (see marked copy of Fig. 6 above).

In regards to claim 33, Matoba shows a locking clip in which the second gap extends from a lateral side of the clip (see Fig. 1 and 6).

In regards to claim 34, Matoba shows a locking clip in which the resiliently flexible spring arms are flexible within the plane of the main body (see Fig. 1 and 6).

In regards to claim 35, Matoba's locking clip includes a pair of spring arms 45 (see Fig. 6).

In regards to claim 36, Matoba shows a locking clip which also includes a central support tab 38 positioned between the pair of spring arms (see Fig. 6) and adapted to be inserted into a slot of a frame to guide the locking clip into engagement with the frame (see Fig. 1).

In regards to claim 37, the central support tab 38 of Matoba's locking clip extends forward from each spring arm (see Fig. 6).

In regards to claim 47, Matoba shows a locking clip as discussed above and also includes at least one strap (b, Fig. 12). The locking clip has all the limitations as claimed and is capable of being used with a headgear assembly of a respiratory mask.

7 Claims 50-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Lithgow et al. (2004/0112384)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

In regards to claim 50, Lithgow shows a locking clip for removably coupling to a frame and headgear assembly for a respiratory mask which includes a main body 30 providing a front portion 34 and a rear portion 32 in which the front portion is removably coupled with a frame of a respiratory mask 12 and the rear portion removably coupled to a headgear assembly (see Figs. 1 & 3). The front portion also includes a pair of resiliently flexible spring arms 36 and a central support tab 42 positioned between the spring arms and adapted to be inserted into a slot of the frame to guide the clip into engagement with the frame (see Fig. 1). The central support tab also includes a groove 44 adapted to receive a protrusion provided in the slot of the frame with a length that is at least half a length of the support tab (see Fig. 4 & 22).

In regards to claim 51, Lithgow's locking clip's flexible spring arms are flexible within the plane of the main body (see Fig. 10).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 38-39 and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matoba (7,111,368) as applied to claim 37 above, and further in view of Anscher (5,507,076).

In regards to claim 38, Matoba discloses all limitations as discussed above but is silent as to providing a groove in the central support tab. However, Anscher teaches a locking tab which includes a groove 18 in a central support tab (see Fig. 7 & 5). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to modify the central support tab of Matoba to include a groove as taught by Anscher in order to provide an "improved locking mechanism" (Anscher Abs. In. 1) and to ensure "proper positioning" (Anscher Abs. In. 13).

In regards to claim 39, the modified Matoba includes a groove (Anscher 18) which has a length that is at least half a length of the central support tab (see Anscher Fig. 5 & 7).

In regards to claim 50, Matoba shows a locking clip with a main body providing a front portion and a rear portion as well as a pair of resiliently flexible spring arms and a central support tab as discussed above in the rejections of claims 32 and 35 (see section 6 of this office action for details). Matoba is silent as to including a groove in the central support tab; however, Anscher teaches a locking tab which includes a groove 18 in a central support tab which has a length that is at least half a length of the central support tab (see Fig. 7 & 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the central support tab of Matoba to include a groove as taught by Anscher in order to provide an "improved locking mechanism" (Anscher Abs. In. 1) and to ensure "proper positioning" (Anscher Abs. In. 13).

In regards to claim 51, the modified Matoba's reference shows a locking clip in which the resiliently flexible spring arms are flexible within the plane of the main body (see Fig. 1 and 6).

In regards to claim 52, the modified Matoba's reference shows that the central support tab (Matoba 38) extends forward from each spring arm (see Fig. 6).

10. Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matoba (7,111,368) and Anscher (5,507,076) as applied to claim 39 above, and further in view of Schmitz (2003/0106192).

In regards to claim 40, the modified Matoba's reference teaches all the limitations as discussed above but is silent as to the front and rear portions being disposed at an angle with respect to one another. However, Schmitz teaches a buckle assembly which includes a front and rear portion disposed at an angle with respect to one another (see Schmitz Fig. 1 and 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the front and rear portions (Matoba 30 & 2) of the modified Matoba's device to be disposed at an angle with respect to one another as taught by Schmitz in order to provide a more comfortable fit against a curved surface.

In regards to claim 41, the modified Matoba's reference includes a finger grip portion, the lateral side of locking tab (Matoba 34) best shown in Fig. 1 of Matoba, adapted to facilitate gripping by the patient.

11. Claims 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matoba (7,111,368), Anscher (5,507,076), and Schmitz (2003/0106192) as applied to claim 41 above, and further in view of Southern (7,290,313).

In regards to claim 42, the modified Matoba's reference teaches all the limitations as discussed above but is silent as to the finger grip portion including a series of protrusions. However, Southern teaches a clasp device which includes a gripping portion with a series of protrusions (Southern 30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the gripping portion of the modified Matoba's reference to include a series of protrusions as taught by Southern in order to provide grip and for "indicating the place at which the latch should be pushed to open" (Southern col. 3 ln. 30-31).

In regards to claim 43, the modified Matoba's reference is capable of allowing the patient to grasp the locking clip between the thumb and forefinger.

In regards to claim 44, the modified Matoba's reference includes first and second gaps, as discussed above in section 6 of this action, which provide flexing space for each spring arm.

In regards to claim 45, the modified Matoba's reference includes a pair of spring arms which have a general spring loop design as when the spring arms are displaced inwardly towards the central support tab an opposite spring force is created allowing the resilient spring arms to regain their original position.

12. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matoba (7,111,368), Anscher (5,507,076), Schmitz (2003/0106192), and Southern (7,290,313) as applied to claim 45 above, and further in view of Nishida et al. (2003/0110605).

In regards to claim 46, the modified Matoba's reference teaches all the limitations as discussed above but is silent as to the type of material the locking clip is made of. One of ordinary skill in the art at the time the invention was made would recognize the choice of polyester to be a matter of design choice. However, Nishida teaches a locking safety buckle which may be made of "polyesters" (Nishida para. 0022 In. 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the locking clip of the modified Matoba's reference to be made of polyester as taught by Nishida in order to provide a light-weight, durable and cheap material for manufacturing.

13. Claims 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton et al. (2004/0045551) in view of Matoba (7,111,368).

In regards to claim 48, Eaton shows a respiratory mask assembly which includes a frame 10 having a main body 14 and a side frame member 28 on each lateral side of the main body (see Fig. 1). Eaton is silent as to providing a locking clip receiver and at least one locking clip according to claim 32; however, Matoba teaches the locking clip with all the limitations according to claim 32, as discussed above in section 6 of this action. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the respiratory mask assembly of Eaton by replacing the attachment slots (Eaton 30) and attachment member (Eaton 32) with the locking clip receiver (Matoba 10) and locking clip as taught by Matoba, in order to provide a locking clip which "can be discharged quickly" (Matoba col. 2 In. 52) and easily by a user.

In regards to claim 49, the modified Eaton's reference is a nasal mask as it "is configured to receive a portion of the patient, such as the nose" (Eaton para. 0028 In. 12-13).

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 50-51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent Publication No. 2004/0112384 by Lithgow et al.. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the patent publication claim and the instant claim are minor and obvious from each other.

In the instant claims 50-51, the elements of the main body with front and rear portion, central support tab, groove, and all functional limitations are included in the patent publication claim 8, but there is only disclosure for at least one resiliently flexible spring arm not a pair as claimed in the instant claims 50-51. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the locking clip with a pair of resiliently flexible spring arms as opposed to only at least one in order to provide a stronger locking mechanism.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Lee (6,611,965), Uehara et al. (2002/0040514), and Fildan (4,712,280) are all related to locking clips.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771